Court File No.: E212762
Court Registry: Vancouver

In the Supreme Court of British Columbia

Claimant: Alison Rose Nagase also known as Alison Rose McEachern

Respondent: Daniel Yoshio Nagase

WITHOUT NOTICE - NOTICE OF APPLICATION

Name of applicant: Alison Rose Nagase

TAKE NOTICE that a without notice application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, British Columbia on November 24, 2023 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Pursuant to section 183 of the *Family Law Act* that, until further order of this court, the Respondent, Daniel Yoshio Nagase born February 24, 1977:
    a. shall be restrained from attending at, nearing or entering within 500 meters of any known residence, place of work, educational facility or place of worship of the Claimant, Alison Rose Nagase born October 18, 1983, Sophia Dawn Nagase born March 26, 2012 ("Sophia"), and Miles Tomio Nagase born July 6, 2014 ("Miles") (collectively, Sophia and Miles are the "Children"), including the following addresses:
        i. the Claimant's residence, located at 204 – 3333 Wesbrook Mall, Vancouver, BC, V6T 1W5,
        ii. Jules Quesnel Elementary School and JQ YMCA, both located at 2050 Crown Street, Vancouver, BC V6R 4K9,
        iii. UBC Hospital, located at 2211 Wesbrook Mall, Vancouver, BC, V6T 1Z3;
        iv. Vancouver General Hospital, located at 899 West 12th Ave, Vancouver, BC, V5Z 1M9;
    b. shall be restrained from directly or indirectly communication with or contacting the Claimant and the Children, except through legal counsel for the purpose of these proceedings; and
    c. shall be restrained from following the Claimant and the Children.
2. Pursuant to section 231 of the *Family Law Act*, any peace officer having jurisdiction within the province of British Columbia including any member of the Royal Canadian Mounted Police, who is provided with a copy of the order shall be directed to remove Daniel Tomio Nagase born February 24, 1977 from any known residence, place or work, educational facility or place of worship of Alison Rose Nagase born October 18, 1983, Sophia Dawn Nagase born March 26, 2012 and Miles Tomio Nagase born July 6, 2014.

3. Pursuant to sections 222 and 225 of the *Family Law Act*, the Respondent is restrained from directly or indirectly communicating or having contact with the Claimant or the Children, except through legal counsel for the purpose of these proceedings.
4. In the event the Respondent breaches paragraph 3 herein, pursuant to sections 231(4) and 231(6) of the *Family Law Act*, a police officer will:
    a. apprehend the Respondent; and
    b. remove him from the premises if he is within 100 metres of the Claimant or the Children.
5. The style of cause of these proceedings be amended to initialize the parties' names as follows: *A.R.N. aka A.R.M. v. D.Y.N.* and that any published Reasons for Judgment or other court documents accessible to the public will initialize the names of the parties and the Children's names.
6. An order that all documents filed in this proceeding be sealed pursuant to an order substantially in the form of the draft Order attached hereto as Schedule "A", including that:
    a. The documents in this proceeding be sealed in the court file in these proceedings and be segregated from, and not form part of, the public record;
    b. The documents be filed under seal in an envelope labelled with (a) the initialized style of cause in this proceeding; (b) a description of the contents of the envelope; and (c) the words "CONFIDENTIAL – SUBJECT TO THE ORDER OF THE COURT MADE November 24, 2023". The filed documents be kept under seal by court registry staff unless otherwise directed by the Court;
    c. Access to the filed documents be permitted by counsel of record, parties of record, representatives of the media, including the press, radio and television, and/or by further court order; and
    d. No media report, including press, television, or radio report, shall disclose the name of any person involved in the proceedings as a party or a witness, or disclose any information likely to identify such person.
7. An interlocutory injunction that until further order of the Court, the Respondent immediately and in any event within 5 days of being served with a copy of this Order:
    a. Immediately delete or remove all statements and content, which he has published or caused to be published in any online forum including any social medial platform, which contain direct or indirect reference to:
        i. the Children,
        ii. the Claimant, and
        iii. the Claimant's counsel and counsel's law firm

(these parties are collectively, the "Protected Parties").

8. The Respondent is prohibited on an interim basis, from publishing or causing to be published any statements or content in any online forum, including social media, which contain direct or indirect reference to the Protected Parties; directly or indirectly having contact with the Protected Parties except through the Respondent's counsel; directing, encouraging, or assisting any other person from engaging in conduct which the Respondent is prohibited from engaging with by way of this order.

Part 2: FACTUAL BASIS

1. The parties were married on June 8, 2013 and separated on September 26, 2014.
2. There are two children of the marriage, namely Sophia Dawn Nagase born March 26, 2012 ("Sophia") and Miles Tomio Nagase born July 6, 2014 ("Miles) (collectively, the "Children").
3. There is a separation agreement dated February 10, 2015 (the "Separation Agreement") that states the following at paragraphs 4, 5(1) and (2) and 6:

> "4. Alison remains the guardian of the Children with all parenting responsibilities of guardians as set out in section 41 of the *Family Law Act*. She will have sole custody of the Children under federal legislation.
>
> 5. (1) Daniel ceases to be the guardian of the Children as at the date of the Agreement with contact with the Children as specified in this Agreement.
>
> (2) If Alison predeceased Daniel, Daniel will resume being the Children's guardian with all parental responsibilities of guardians as set out in section 41 of the *Family Law Act*. If Alison predeceases Daniel, Daniel will have sole custody of the Children under federal legislation.
>
> 6. The Children will ordinarily reside with Alison."

History

4. On November 10, 2021, counsel for the Claimant appeared in court before Master Taylor to obtain two *ex parte* orders against the Respondent:
    a. A Protection Order restraining the Respondent from communicating with her and the Children, and from attending within 500 meters of the Claimant and the Children's work, school, and residence; and
    b. An order that:
        i. the parties' Separation Agreement be varied to suspend the Respondent's contact with the Children;
        ii. the Respondent be restrained from removing the Children from the Greater Vancouver Regional District; and
        iii. In the event the Respondent breached this order and took the Children, a police officer will apprehend the Children and take the Children to the Claimant, and for the purpose of locating and apprehending the Children,

a police officer may enter and search any place he or she has reasonable and probable grounds for believing the Children may be

(the "No Contact Order").

5. The Protection Order expired after one year, on November 10, 2022. The Claimant did not apply to renew it at that time. The No Contact Order is still in force and effect as it does not have an expiry date.

6. Both the Protection Order and the No Contact Order were granted as a result of the Respondent's inappropriate and concerning behaviour towards the Claimant and the Children, which caused the Claimant to be fearful of him and the safety of her and the Children. The Respondent's behaviour also caused the Claimant to become fearful that he would kidnap the Children and remove them from the Greater Vancouver Regional District, and go "off the grid".

7. The Respondent's concerning behaviour significantly escalated when the COVID-19 pandemic occurred, as he is a forceful anti-vaccine advocate.

8. The Respondent was formerly employed as a physician, but lost his job in 2021 when he was suspended by the College of Physicians and Surgeons of Alberta for giving Ivermectin to patients during his locum in Alberta. The Respondent had secured Ivermectin from an agricultural supply (meant for animals) and administered it to his patients.

9. Since then, the Respondent has been involved as a speaker for the anti-vaccination platform, including as a speaker at the protest at the BC Legislature on December 9, 2021,where effigies of then-Premier John Horgan, Health Minister Adrian Dix, and Public Safety Minister Mike Farnworth were hung with ropes tied around their necks.

10. As a result of his speech at that protest, the College of Physicians and Surgeons of British Columbia has issued a citation of misconduct against the Respondent.

11. Since the Protection Order and No Contact Order were granted, the Respondent has engaged in a series of bizarre and concerning behaviours against the Claimant, the Children, the Claimant's counsel, and the Master who granted the two *ex parte* orders. He has publicly spoken about and written about this family law proceeding to his anti-vaccine audience, including in an online blog where he has publicized the Children's names and written defamatory statements about the Claimant and her counsel.

12. The Respondent also breached the Protection Order while it was in effect, including contacting her almost immediately after being served with the Protection Order. Later on, he has his mother contact the Claimant and hand her child and spousal support cheques with inappropriate messages on them, including stick drawings of an angry nurse (presumably the Claimant), and sad children.

13. The Respondent has also breached the No Contact Order multiple times, including most recently:

    a. In April of 2023, the Claimant discovered that the Respondent was contacting the Children on the Facebook Messenger Kids App, including video calls with the Children while they were at their grandparents' for spring break in March of 2023. It appears that as a result of these calls with the Children, he discovered that the Claimant had the Children vaccinated against COVID-19.

    b. On June 12, 2023, the Respondent and his mother attended at the Children's school. The VPD removed him from the premises.

c. On October 3, 2023, the Respondent went to the courtyard of the Children's school at approximately 8:30 a.m., and handed a child support cheque with problematic messages written in the memo of the same (detailed below) directly to Sophia. He said hello to both Children.

d. On October 5, 2023, the Respondent and his mother went to the Children's school in the courtyard again. He gave the Children void cheques with his contact information and his blog address. The Respondent's blog includes articles referencing the parties' family law matter, and his lawsuit for $66.6 million against the Supreme Court and Master Taylor.

e. On November 1, 2023, the Respondent and his mother went to the Children's school again, to give Sophia the child support cheque for December 2023, with a memo stating "cashing this cheque returns custody of Miles and Sophia to their Father". The Respondentalso gave the Children a blank cheque each, in his handwriting, with his contact information (phone number and Facebook profile) on it.

f. On November 14, 2023, the Respondent and his mother went to the YMCA (the Children's before and after school care located in the same place as their school) and spoke to the Children. On the same day, the Respondent sent a text message to the Claimant stating that he expected Miles to be checked "with a crp and high-sensitivity troponin" (presumably for mRNA-induced myocarditis). However, Miles did not have any cardiac symptoms (chest pain, trouble breathing, palpitations, etc.). On November 15, 2023, the Respondent sent another text message and left the Claimant a voicemail regarding Miles laying on the ground at the YMCA and that Miles needed to be checked for myocarditis.

g. On Thursday, November 16, 2023, the Respondent again attended the YMCA and told the staff that Miles laying on the floor was indicative of heard issues. The Children were not at school that day.

h. On Friday, November 17, 2023, the Respondent attended the Children's school before they were present. He asked one of Sophia's friends if the Children were there.

i. The Respondent then again returned that same afternoon on November 17, 2023, and barged into the YMCA and charged towards Miles, asking him questions about his health and how he was feeling. A staff member asked him to leave. The Respondent attempted to call 911 for an ambulance. Another YMCA staff member contacted the police, who eventually removed the Respondent from the premises.

14. The YMCA is now keeping the Children inside due to the Respondent's escalating and problematic visits. The visits are increasing in both frequency and the level of concern caused to the Children, the YMCA staff, and the other children at the school and daycare.

15. Prior to this, the Respondent had been sending the Claimant her child and spousal support cheques with inappropriate notes in the memo section of the cheques, including "Adult Child Support", "cashing this cheque settles all future debts by agreement", and "cashing this child support cheque returns guardianship fully to the most qualified parent".

16. The Respondent seems to have taken the Claimant's cashing of those cheques as allowing him to cease paying spousal support, and he has not paid spousal support since his July 2023 cheque that stated "cashing this cheque settles all future debts by agreement".

17. Claimant's counsel wrote to the Respondent on September 5, 2023 advising the Respondent that the messages in the cheque were inappropriate and were not legally binding.

18. As a result of that, on September 26, 2023, the Respondent published on his blog an article titled ""Canadian Lawyers – How They Operate" that mentioned Miles by name. His blog post also mentioned Claimant's counsel by name and disparaged Claimant's counsel, and included a full copy of the Claimant's counsel's letter. He sent a copy of the link to his blog post to both the Claimant and Claimant's counsel.

19. The Respondent has also written numerous other posts about the Claimant, the Children, and his lawsuit against Master Taylor. The Respondent's blog is followed by many subscribers that appear to be active in the anti-vaccine community.

20. For example on May 6, 2023, the Respondent sent the Claimant a text message to a post he wrote, stating that on March 26, 2023, he "found out from my kids age 8 and 11 that my ex-wife had injected them with the COVID MRNA experiment." The Respondent refers to the Claimant in this blog post, including revealing that she is a registered nurse. The Claimant was not explicitly named in this blog post, but it was intimidating to her to find out that he was writing about her. The Claimant is also the only RN in BC with the same last name as the Respondent, so the public could easily find out who she was.

21. As another example, the Respondent sued Master Taylor for $66.6 million, arising from the *ex parte* Protection Order and No Contact Order granted by Master Taylor. The Respondent's lawsuit was ultimately dismissed as frivolous, vexatious, and an abuse of process in the summer of 2023, but his behaviour during the proceeding indicated that he was not respectful of the court process. He used nonsensical pseudo-legal arguments in his submissions and initially refused to step into the courtroom, instead standing in the hallway and speaking loudly through an open door.

22. On August 14, 2023, after his lawsuit against Master Taylor was dismissed, the Respondent posted a blog titled "A Criminal Surprise?" naming Justice Tammen as the judge who dismissed his lawsuit against Master Taylor. In his post, the Respondent wrote:

    "Justice Michael Tammen claimed the Judiciary has absolute immunity.

    What does this mean?

    This means that Judges, Magistrates and members of the Judiciary have claimed the Right to Cause Harm without accountability.

    Any group claiming the right to do harm unto others without recourse effectively becomes a tyranny of criminals. Here is why:

    When Judges have no fear of accountability from harming lawful women and men, then the only limitation on Judges would be from the unlawful.

    That's Right! In any case between lawful men and women and a criminal, when Judges have no responsibility to the lawful, the only fear a judge would have is the vengeance [sic] of the lawless.

    This makes the entire Judiciary an extension of criminals in society!

> Organized crime, criminals and their interests will be the only influence on the legal system now that the Judiciary has claimed ABSOLUTE IMMUNITY FROM LAWFUL MEN AND WOMEN!
>
> More about Judge Michael Tammen:
>
> https://www.ecosia.org/images?q=justice%20michael%20tammen#id=90BCDC0212D0FADDC43EC53C432E917420AE74B8
>
> https://www.lifesitenews.com/news/canadian-judge-jails-father-for-breaking-gag-order-on-govt-supported-sex-change-procedures-on-his-teenage-daughter/
>
> **If it is wrong to live under the tyranny of LAWLESS criminals, and the JUDICIARY HAS BECOME AN EXTENSION OF ORGANIZED CRIME, What can be done?"**
>
> [emphasis in the Respondent's blog post]

23. The Respondent has also demanded that Claimant's counsel personally, and/or her law firm, pay the Respondent $132 million, on similar grounds as his lawsuit against Master Taylor.
24. The Respondent's erratic behaviour stemming from his rabid anti-vaccine beliefs and his escalating breach of the No Contact Order are psychological and emotional abuse of the Claimant and his Children. There is a significant threat of harm to the Claimant and the Children if his behavior is permitted to continue.
25. His public posting revealing the names of the Children and identifiable information about the Claimant and the Children also need to be curtailed.

Part 3: LEGAL BASIS

1. *Supreme Court Family Rules*, Rule 10-9(6).

Protection Order and No Contact Order

2. *Family Law Act*, section 37:

> **Best interests of the child**
>
> 37(1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.
>
> (2) To determine what is in the best interests of the child, all of the child's needs and circumstances must be considered, including the following:
>
> (a) the child's health and emotional well-being;
>
> (b) the child's views, unless it would be inappropriate to consider them;
>
> (c) the nature and strength of the relationship between the child and significant person's in the child's life;
>
> (d) the history of the child's care;
>
> (e) the child's need for stability, given the child's age and stage of development;

(f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;

(g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

(h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child or another family member;

(i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;

(j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

(3) An agreement or order is not in the best interests of the child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security or well-being.

(4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extend that it affects that factor.

[emphasis added]

3. Section 1 of the *Family Law Act*:

Definitions

...

"family member", with respect to a person, means

(a) the person's spouse or former spouse...

..

(e) the person's child,

...

"family violence" includes

(a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,

...

(c) attempts to physically or sexually abuse a family member,

(d) psychological or emotional abuse of a family member, including

(i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,

(ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,

(iii) stalking or following of the family member, and

(iv) intentional damage to property, and

(e) in the case of a child, direct or indirect exposure to family violence;

4. Sections 182 to 186 of the *Family Law Act*:

Definitions

182 ...

"at-risk family member" means a person whose safety and security is or is likely at risk from family violence carried out by a family member...

Orders respecting protection

183 (1) An order under this section

(a) may be made on application by a family member claiming to be an at-risk family member, by a person on behalf of an at-risk family member, or on the court's own initiative, and

(b) need not be made in conjunction with any other proceeding or claim for relief under this Act.

(2) A court may make an order against a family member for the protection of another family member if the court determines that

(a) family violence is likely to occur, and

(b) the other family member is an at-risk family member.

(3) An order under subsection (2) may include one or more of the following:

(a) a provision restraining the family member from
(i) directly or indirectly communicating with or contacting the at-risk family member or a specified person,
(ii) attending at, nearing or entering a place regularly attended by the at-risk family member, including the residence, property, business, school or place of employment of the at-risk family member, even if the family member owns the place, or has a right to possess the place,
(iii) following the at-risk family member,
(iv) possessing a weapon, a firearm or a specified object, or
(v) possessing a licence, registration certificate, authorization or other document relating to a weapon or firearm;

(b) limits on the family member in communicating with or contacting the at-risk family member, including specifying the manner or means of communication or contact;

(c) directions to a police officer to

(i) remove the family member from the residence immediately or within a specified period of time,

(ii) accompany the family member, the at-risk family member or a specified person to the residence as soon as practicable, or within a specified period of time, to supervise the removal of personal belongings, or

(iii) seize from the family member anything referred to in paragraph (a) (iv) or (v);

(d) a provision requiring the family member to report to the court, or to a person named by the court, at the time and in the manner specified by the court;

(e) any terms or conditions the court considers necessary to

(i) protect the safety and security of the at-risk family member, or

(ii) implement the order.

(4) Unless the court provides otherwise, an order under this section expires one year after the date it is made.

(5) If an order is made under this section at the same time as another order is made under this Act, including an order made under Division 5 *[Orders Respecting Conduct]* of Part 10, the orders must not be recorded in the same document.

Whether to make protection order

184 (1) In determining whether to make an order under this Part, the court must consider at least the following risk factors:

(a) any history of family violence by the family member against whom the order is to be made;

(b) whether any family violence is repetitive or escalating;

(c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;

(d) the current status of the relationship between the family member against whom the order is to be made and the at-risk family member, including any recent separation or intention to separate;

(e) any circumstance of the family member against whom the order is to be made that may increase the risk of family violence by that family member, including substance abuse, employment or financial problems, mental health problems associated with a risk of violence, access to weapons, or a history of violence;
(f) the at-risk family member's perception of risks to his or her own safety and security;

(g) any circumstance that may increase the at-risk family member's vulnerability, including pregnancy, age, family circumstances, health or economic dependence.

(2) If family members are seeking orders under this Part against each other, the court must consider whether the order should be made against one person only, taking into account

(a) the history of, and potential for, family violence,

(b) the extent of any injuries or harm suffered, and

(c) the respective vulnerability of the applicants.

(3) For the purposes of subsection (2), the person who initiates a particular incident of family violence is not necessarily the person against whom an order should be made.

(4) The court may make an order under this Part regardless of whether any of the following circumstances exist:

(a) an order for the protection of the at-risk family member has been made previously against the family member against whom an order is to be made, whether or not the family member complied with the order;

(b) the family member against whom the order is to be made is temporarily absent from the residence;

(c) the at-risk family member is temporarily residing in an emergency shelter or other safe place;

(d) criminal charges have been or may be laid against the family member against whom the order is to be made;

(e) the at-risk family member has a history of returning to the residence and of living with the family member against whom the order is to be made after family violence has occurred;

(f) an order under section 225 *[orders restricting communications]* has been made, respecting the at-risk family member, against the family member against whom the order is to be made.

If child a family member

185 If a child is a family member, the court must consider, in addition to the factors set out in section 184 *[whether to make protection order]*,

(a) whether the child may be exposed to family violence if an order under this Part is not made, and

(b) whether an order under this Part should also be made respecting the child if an order under this Part is made respecting the child's parent or guardian.

Orders without notice

186 (1) An application for an order under this Part may be made without notice.

(2) If an order is made under this Part without notice, the court, on application by the party against whom the order is made, may

(a) set aside the order, or

(b) make an order under section 187 *[changing or terminating orders respecting protection]*.

5. ***Morgadinho v. Morgadinho***, 2014 CarswellBC 303:

[59] The purpose of these provisions is obvious - to recognize the danger to vulnerable family members that can arise in these often-volatile relationships and to ensure that courts have the means of ensuring the safety of those who are at risk. The broad and inclusive definition of "family violence" recognizes that the kinds of harm that can be inflicted in this situation extend beyond the infliction of physical violence.

[65] I conclude that some type of family violence, most likely threats or other forms of emotional abuse, is likely to emanate from Mr. Morgadinho in the future and that Ms. Goncalves's safety and security are likely at risk from it. In essence, it appears to me that at times this dysfunctional relationship provokes such significant anger in Mr. Morgadinho that he abandons his self-control. It has in the past led to the quite frightening incident with the butcher knife and the water bottles, which he admits, and more recently to fairly direct threats when she has defied his wishes.

[66] I conclude that the appropriate orders are to prohibit Mr. Morgadinho from having any direct or indirect communication with Ms. Goncalves or from attending at, near or entering any place regularly attended by her, subject to the following exceptions:

- He may communicate with her by text or email solely for the purposes of making arrangements concerning their respective parenting time with the children and of passing on purely factual information about the health, education and general well-being of the children. His communications must be courteous at all times and contain no criticisms or negative personal comments of any kind, and no profanity.

- He may participate with her in exchanges of the children at the beginning or end of their respective parenting time, provided that his communication with her is restricted solely to passing on any essential information about the well-being of the children that is so urgent that it cannot wait for an email or text message.

- He may attend the children's school events when she is there, provided that he does not approach or communicate with her during them.

6. ***Dawson v. Dawson***, 2014 BCSC 44:

[44] The fact that there has been an act of physical family violence, even a single act of physical family violence, may provide a sufficient basis to conclude that family violence is likely to occur in the future. Although the passage of time may serve to reduce the probative force of such evidence, to the extent the circumstances giving rise to the earlier act of violence remain at large, the predictive quality of that earlier act may not be diminished with the passage of time. Moreover, it seems to me that when assessing the "likely" threshold set out in s. 183(2)(a) regard should be had to the gravity of the harm that might follow from an act of physical family violence.

[45] ...Given the protective purpose of orders under Part 9 of the *Family Law Act,* it is reasonable in my view to apply what might be termed a sliding scale to the threshold. The potential for very serious acts of violence is sufficient to engage the provisions o the *Act,* even if those acts of violence are, in absolute terms, not particularly likely.

7. The decision of Madam Justice Griffin, as she then was, in ***F.K. v. M.K.***, 2010 BCSC 563 (CanLII) includes an in depth consideration of the issues around supervision of or termination of access, particularly:

[147] In *V.S.J. v. L.J.G.*, 2004 CanLII 17126 (ON SC), [2004] O.T.C. 460 (S.C.J.), the court found that an order for supervised access, like termination of access, requires evidence of exceptional circumstances as it is just one small step away from a complete termination of the parent-child relationship: at para. 1. At paragraph 135,

the court set out factors most commonly considered by the courts in terminating access:

> 1. Long term harassment and harmful behaviours towards the custodial parent causing that parent and the child stress and or fear. See *M.(B.P.) v. M.(B.L.D.E.)*, supra; *Stewart v. Bachman*, [2003] O.J. No. 433 (Sup.Ct.); *Studley v. O'Laughlin*, [2000] N.S.J. No. 210 (N.S.S.C.) (Fam.Div.); *Dixon v. Hinsley*, 2001 CanLII 38986 (ON CJ), [2001] O.J. No. 3707.
>
> 2. History of violence; unpredictable, uncontrollable behaviour; alcohol, drug abuse which has been witnessed by the child and/or presents a risk to the child's safety and well being. See *Jafari v. Dadar*, supra; *Maxwell v. Maxwell*, [1986] N.B.J. No. 769 (N.B.Q.B.); *Abdo v. Abdo* (1993), 1993 CanLII 3124 (NS CA), 126 N.S.R. (2d) 1 (N.S.C.A.); *Studley v. O'Laughlin*, supra.
>
> 3. Extreme parental alienation which has resulted in changes of custody and, at times, no access orders to the former custodial parent. See *Tremblay v. Tremblay* (1987), 1987 CanLII 147 (AB QB), 10 R.F.L. (3d) 166; *Reeves v. Reeves*, [2001] O.J. No. 308 (Sup.Ct).
>
> 4. Ongoing severe denigration of the other parent. See *Frost v. Allen*, [1995] M.J. No. 111 (Man.Q.B.); *Gorgichuk v. Gorgichuk*, supra.
>
> 5. Lack of relationship or attachment between noncustodial parent and child. See *Studley v. O'Laughlin*, supra; *M.(B.P.) v. M.(B.L.D.E.)*, supra.
>
> 6. Neglect or abuse to a child on the access visits. See *Maxwell v. Maxwell*, supra.
>
> 7. Older children's wishes and preferences to terminate access. See *Gorgichuk v. Gorgichuk*, supra; *Frost v. Allen*, supra; *Dixon v. Hinsley*, supra; *Pavao v. Pavao*, [2000] O.J. No. 1010 (Sup.Ct.).

[148] At paragraph 137, the court in *V.S.J. v. L.J.G.* found that those factors listed above would also be relevant to a consideration of supervised access. The court also stated:

> ...It is possible through a supervision order to do the following: protect children from risk of harm; continue or promote the parent/child relationship; direct the access parent to engage in programming, counselling or treatment to deal with issues relevant to parenting; create a bridge between no relationship and a normal parenting relationship; and, avoid or reduce the conflict between parents and thus, the impact upon children.

8. In ***F.Z. v. A.G.Z.***, 2018 BCSC 1248, after considering the factors in *F.K. v. M.K.*, Master Muir held that the Respondent would have limited access to the children and one-hour periods of contact two days per week. A protection order was also made. The order was to be set out as an exception to the prohibition of contact in the protection order.

9. In ***M.W.M. v. J.D.K.***, 2015 BCPC 315, the Court found that the respondent's conduct fell within the definition of family violence and granted a protection order.

> [52] In this case, I find that the Applicant's conduct towards the Respondent falls within the definition of psychological or emotional abuse and therefore within the definition of family violence under section 2 of the *Family Law Act*. The following aspects of that communication lead me this conclusion:
>
> 1. The excessive number of phone calls, emails and text messages over such a brief period of time.

2. The Applicant's persistence in continuing to phone, text and email the Respondent after she repeatedly requested that he cease doing so.

3. The Applicant's insistence that he had to meet in person and alone with the Respondent to resolve the time-share issue when this was not something that was required.

4. The Applicant's constant calling of the Respondent at her workplace despite her requests that he not do so.

5. The Applicant's persistence in injecting topics of a sexual nature into discussions about resolution of the time-share issue in text messages.

6. The Applicant's questioning of the Respondent about her new relationship status in the course of communication about resolving property issues.

7. The Applicant's unsettling communication about his application for a gun license and his discussion about his shooting ability.

8. The Applicant's repeated visits to the Respondent's neighbourhood.

9. The Applicant's inability to appreciate the adverse effect of his sending of such a large volume of email and text messages.

...

[56] Finally I must decide, on a consideration of the factors set out in section 184(1) of the *Act*, whether I should exercise my discretion to make one or more protection orders in this case. In considering these factors, I note that there has not been any history of family violence in this relationship, in the sense that there are no instances of assaultive behaviour or of direct or explicit threats made. I am concerned however over the escalating nature of the Applicant's persistent communication with the Respondent, its sexual themes, its allusion to the Applicant's proficiency with guns, and its demanding nature that the Respondent had to meet with and talk to the Applicant when she had clearly expressed her unwillingness to do so. The Applicant's lack of respect of the Respondent's wishes that he not contact her at work is also troubling. I am also concerned by the Applicant's apparent lack of insight into his conduct and how it might unsettle someone or otherwise be psychologically abusive.

10. In ***S.M. v. R.M.***, 2015 BCSC 1344, there was no suggestion that the respondent had ever physically abused a family member. However, his emotional and psychological abuse of the claimant and the children, including communications about the claimant's new partner, led the Court to grant a protection order against the respondent for the claimant, the children, and the claimant's new partner. Since separation, from the span of March 2013 to April 2015, the respondent had sent the claimant over 900 unwelcome emails and text messages, and had included the children in many of those communications.

[52] I am obliged to consider the claimant's perception of risks to her own safety. Having done so, I am compelled to the conclusion that her experience of intimidation, harassment, coercion, and thinly-veiled threats at the hands of the respondent, and her perception of the risks flowing therefrom, are grounded in the evidence. Collectively viewed, I am satisfied that the communications were designed to, and did, instill fear.

...

[54] I am satisfied that family violence is likely to occur and that the claimant and her children and common-law spouse are at-risk family members. I am satisfied that it is more appropriate to make a protection order than an order under s. 225 of the *FLA*.

11. Sections 222 and 225 of the *Family Law Act*:

Purposes for which orders respecting conduct may be made
222 At any time during a proceeding or on the making of an order under this Act, the court may make an order under this Division for one or more of the following purposes:
(a) to facilitate the settlement of a family law dispute or of an issue that may become the subject of a family law dispute;
(b) to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order;
(c) to prevent misuse of the court process;
(d) to facilitate arrangements pending final determination of a family law dispute.

Orders restricting communications
225 Unless it would be more appropriate to make an order under Part 9 *[Protection from Family Violence]*, a court may make an order setting restrictions or conditions respecting communications between parties, including respecting when or how communications may be made.

12. Section 231(1) and (4) to (6) of the *Family Law Act*:

Extraordinary remedies

231 (1) This section applies if

(a) a person fails to comply with an order made under this Act, and

(b) the court is satisfied that no other order under this Act will be sufficient to secure the person's compliance.

(4) If satisfied under section 61 *[denial of parenting time or contact]* that a person has been wrongfully denied parenting time or contact with a child by the child's guardian, a court may make an order requiring a police officer to apprehend the child and take the child to the person.

(5) If satisfied that a person having contact with a child has wrongfully withheld the child from a guardian of the child, a court may make an order requiring a police officer to apprehend the child and take the child to the guardian.

(6) For the purpose of locating and apprehending a child in accordance with an order made under subsection (4) or (5), a police officer may enter and search any place he or she has reasonable and probable grounds for believing the child to be.

13. In ***L.J.P. v R.S.L.G***, 2020 BCSC 1594, the Court found that the respondent father had wrongfully retained the child in British Columbia, in breach of the parties' agreement for the child to be returned to the claimant in New Mexico, USA. The respondent father relied on COVID-19 and immigration concerns, as well as the child's apparent wishes, to support his position that the child ought to remain in BC. The Court ordered that the child be returned to the custody of the claimant, and if the respondent did not do so, the claimant was granted leave to seek a police enforcement order pursuant to section 231, as follows:

[40] I make the following orders:

a) Pursuant to s. 45 of the FLA, an order that the respondent, R.S.L.G., return the Child to the custody of the claimant, L.J.P. by November 5, 2020, at noon.

b) If the Child is not returned to the custody of the claimant by November 5, 2020 at noon, the claimant has leave to seek orders pursuant to ss. 231(4) and 231(6) of the *Family Law Act* that a police officer apprehend the Child, and take the Child to the claimant, and for the purpose of locating and apprehending the Child in accordance with this order, a police officer may enter and search any place he or she has reasonable and probable grounds for believing the Child to be...

Publication Ban and Anonymization of Parties' and Children's Names

14. The principles that guide the court's discretion to make sealing and anonymity orders was recently summarized by Ballance J. in, *M.V. v. Workers' Compensation Appeal Tribunal,* 2016 BCSC 1507 ["*M.V.*"]:

> [5] The open court principle is a hallmark of our judicial system: *MacIntyre v. Nova Scotia (Attorney General)*, 1982 CanLII 14 (SCC), [1982] 1S.C.R. 175 [*MacIntyre*]. Openness fosters public confidence in the effective administration of justice and in the integrity of the judicial system at large: *MacIntyre* at 185. Curtailment of public access to judicial proceedings is justified only where social values of superordinate importance require protection: *MacIntyre* at 186-187.
>
> [6] The common law test for the issuance of a publication ban laid out by the Supreme Court of Canada in *Dagenais v. Canadian Broadcasting Corp.*, 1994 CanLII 39 (SCC), [1994] 3 S.C.R. 835, and reformulated in *R. v. Mentuck*, 2001 SCC 76, [2001] 3 S.C.R. 442 [*Mentuck*], guides the court's exercise of discretion in making anonymity orders and sealing orders.
>
> [7] The *Dagenais/Mentuck* test is a flexible and contextual one. There is no closed category of circumstances that may be viewed as constituting a social value of superordinate importance: *C.W. v. L.G.M*, 2004 BCSC 1499 at para. 25. That said, the mere interest to avoid embarrassment is not sufficient to displace the principle of openness.

15. The Court in *Mentuck* also clarified that in terms of "necessity," the risk to the proper administration of justice in question must be a "serious one ... [t]hat is, it must be a risk the reality of which is well-grounded in the evidence" (at para. 34). The authorities establish that the standard is not one of mere convenience or expediency; in order to displace the public interest in an open-court process, an applicant must provide cogent evidence to support the alleged necessity for anonymity: *C.W.* at para. 25.

16. In *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 S.C.R. 522 [*Sierra Club*] at paras. 37-38, the Court affirmed that where the question of openness and its exceptions arises in a civil proceeding that does not directly engage the individual's rights under s.7 of the *Charter*, those rights

should, nonetheless, inform the exercise of discretion in determining whether there are any exceptions to the openness principle.

17. The following principles were set out by the Court in *C.W. v. L.G.M.*, 2004 BCSC 1499 (CanLII) after reviewing the relevant case law:

    a. The principle that the court's process must be open to public scrutiny must give way when it is necessary to ensure that justice is done.

    b. There must be some social value or public interest of superordinate importance in order to curtail public accessibility.

    c. The onus is on the person seeking to restrict public accessibility to demonstrate that the order is necessary in order to achieve justice. The test is not one of convenience but of necessity.

    d. The mere private interest of a litigant to avoid embarrassment is not sufficient to displace the public interest in an open court process.

    e. The categories of circumstances that may be viewed as constituting a social value of superordinate importance should not be considered closed. They include:

        i. where disclosure of the litigant's name or identity would effectively destroy the right of confidentially, which is the very relief sought in the proceeding;

        ii. where persons entitled to justice would be reasonably deterred from seeking it in the court if their names were disclosed;

        iii. where the administration of justice would be rendered impracticable if the public were not excluded;

        iv. where anonymity is necessary in order to ensure a fair trial;

        v. where anonymity is necessary to protect innocent persons and little public benefit would be served by disclosure of the names of the innocent;

        vi. where disclosure of the identity of the plaintiff would cause that person to suffer damages in addition to those already suffered as a result of the wrong for which the plaintiff is seeking compensation;

        vii. In my view there must be evidence related to the particular applicant to support the alleged necessity for anonymity rather than mere statements of generality; and

viii. Finally, it is my view that the principle of the open court should be displaced only to the extent that it is necessary to preserve the superordinate social value.

18. In G.M.S. v Dr. Z, 2021 BCSC 1915 (CanLII), the Court used the *Sherman Estate* test to grant a publication ban due to the harm the case could have on the doctor's professional reputation and the privacy concerns of the child. In that case, a child's parents sought an injunction preventing the doctor from performing a double-mastectomy on their 17 year old child who was gender dysphoric. The court reasoned as follows:

> [24] The Supreme Court of Canada has indicated that the court does have an inherent jurisdiction under the common law to order a publication ban of confidential information where necessary and when the salutary effects of the publication ban outweigh its deleterious effects to the free expression of those affected by the ban (Dagenais v. Canadian Broadcasting Corp., 1994 CanLII 39 (SCC), [1994] 3 S.C.R. 835 and Sherman Estate v. Donovan, 2021 SCC 25)
>
> [25] The Dagenais framework sets out the following criteria: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent the serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.
>
> [26] Here, I am satisfied that court openness poses a serious risk to an important public interest: preventing serious physical and professional harm to the surgeon. The surgeon has set out in his deposition the basis for his concerns with respect to his physical and professional safety. I am satisfied that these concerns are serious. A refusal to grant this order would not only affect Dr. Z's personal safety, it would likely impact his ability to provide care to other patients without safety concerns or negative intrusions of privacy into the physician-patient relationship. Patients such as R.A.S.J. are at a particularly sensitive stage in their lives and public scrutiny would have a negative effect on them. There are also legitimate concerns about the negative effects on the physician's relationship with other patients. Because the affidavits were filed on such short notice and include highly sensitive information, it is appropriate that the file be sealed and the parties file appropriately anonymized materials so that these may be available to the public. The public's interest will be addressed by anonymous materials.

19. In ***Schuetze v. Pyper***, 2021 BCSC 2599, the Court granted a tailored order redacting information about the children and the applicant, and prohibited anyone with access to the court file from communicating the same:

> [26] Ultimately, I am not satisfied that either the sealing order or the anonymity order sought by Mr. Pyper is necessary to prevent a serious risk to the children's privacy. In my view, a much more tailored order, one that redacts information that identifies the children, including their names, their month of birth, the name of the neighbour to whom they disclosed information about the battery, and the municipality in which they live, as well as Mr. Pyper's middle name, from the trial decision and other reasons issued in this action, along with an order that prohibits anyone who accesses the court file from communicating this same information, strikes the appropriate balance between protecting the public interest in the children's privacy and the open court principle.

> [27] I reach this conclusion bearing in mind the principle of proportionality and the requirement that the benefit of the order sought must outweigh its negative effects on court openness.

20. In ***A.N.H. v. L.D.G.***, 2022 BCCA 155, the Court initialized the style of cause to remove the children's names:

> Should the style of cause be amended to remove the children's names?
>
> [54] L.D.G. asks that this Court amend the style of cause to remove the children's names. She highlights their privacy interests and the fact that these proceedings were not properly brought by A.N.H. as litigation guardian for the children. Indeed, A.N.H. has previously conceded that he had no authority to bring these many actions on the children's behalf: 2017 BCCA 216 at paras. 11–12. Justice Abrioux provided cogent reasons for striking A.N.H.'s pleadings rather than replacing him with a neutral litigation guardian: 2016 BCSC 1559 at paras. 40–63.
>
> [55] L.D.G. asks that all of the litigation be initialized because A.N.H.'s surname is not a common name, and her children are suffering as a result of the ongoing litigation. A.N.H. does not oppose complete initialization.
>
> [56] Accordingly, the question then is whether the style of cause here should be amended to substitute A.N.H. as a party in his own right, rather than as a litigation guardian for his children. In our view, this would be appropriate.
>
> [57] Despite having no interest in the litigation, the children's names have consistently been used by A.N.H., with no regard to their privacy interests. The evidence before us included a video, non-consensually recorded by A.N.H., of the parties' son visibly upset at the fact that his friends know about the ongoing litigation between his parents due to extensive media reports. As noted above, A.N.H. can bring no further litigation, including in the names of his children. In Cambridge Mortgage Investment Corporation v. Matich, 2014 BCCA 377, this Court removed the name of a vexatious litigant who had no standing as a proper appellant or respondent from the appeal record. Accordingly, the Court held that the "appeals should be tidied, thereby to make clear, on the face of the appeal record, the identities of the parties and thus the names of those who may file documents in respect to the appeal": para. 27. The same reasoning applies here.
>
> [58] In our view, A.N.H. should not be permitted to hide behind his children while he brings frivolous and abusive claims. We recall Justice Cole's findings in 2014 that A.N.H.'s conduct in this litigation amounted to family violence against L.D.G. and that this has indirectly affected the children. In our view, bringing meritless claims in the names of the children against their mother, all while knowing that this is improper, goes beyond merely an indirect effect. We observe that, over the past several months, the parties' and the children's names have retroactively been replaced with initials in the proceedings below, although there does not seem to be a formal order to that effect. As such, we direct that the style of cause in these proceedings be amended to remove the names of the children, and be replaced with the initials of A.N.H.

21. It is important to note that child protection court proceedings are closed to members of the public, and media access is subject to terms under the *Child and Family Services Act*, C.C.S.M. c. C80, ("the *CFSA*")).

22. In *Canadian Broadcasting Corp. v. Manitoba (A.G.)*, 2008 MBCA 94 (CanLII), 228 Man. R. (2d) 312, the Manitoba Court of Appeal considered the legislative scheme under *the CFSA* in relation to the confidentiality of child protection agency records and conducted a contextual analysis, adverting to the competing aspects of the public interest in "freedom of the press" and the open courts principle. Speaking for the Court, former Chief Justice Scott stated;

> **36** I agree with the position taken by the Attorney General and all other parties except the intervener Southeast CFS that for the regime under the *Act* to pass constitutional muster, the court must possess the discretion to perform a *Dagenais/Mentuck* balancing analysis when the request is made by the media for access to documents. It is overly simplistic, and wrong, to say that the mere fact that a CFS record is filed as an exhibit at an inquest means that it is in the public realm. I endorse the Attorney General's description of these interests as:
>
> > ... [G]enerally the public interest in freedom of the press and open court principle (adapted for the context of an inquest), the privacy and dignity of the child and her family, and the public interest in maintaining confidence in child protection agencies by ensuring that records are kept confidential.
>
> **37** I agree, too, with the submission of counsel for the Government of Manitoba that sec. 76(3) is not, by itself, freestanding enabling legislation. It simply vests the court that the particular matter is before - in this case the inquest judge - with the ability to deal with requests for access beyond that which is already provided in secs. 75 and 76 of the *Act*. Applications for access where there are no court proceedings can be made to the Court of Queen's Bench. But whichever court is engaged in a sec. 76(3) analysis under the *Act*, the process and criteria to be applied are precisely those set forth by the Supreme Court in *Dagenais/Mentuck*. And see *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188 at paras. 7-8, where Fish J., for the court, emphasized that the *Dagenais/Mentuck* test was meant to be applied in a "flexible and contextual manner."
>
> **38** As the Supreme Court noted in *Dagenais* itself, "publication bans should not always be seen as a clash between two titans - freedom of expression for the media versus the right to a fair trial for the accused" (at p. 881); rather, it is a question of determining firstly whether a ban of some sort is necessary to guard the fairness of the trial and, if so, to strike the right balance "between the salutary and deleterious effects of a publication ban" (at p. 884), keeping in mind that there should be as minimal an interference as possible with the public's right to know what is going on in their courts.
>
> **39** In other words, in this instance, the benefit of not permitting disclosure or communication of information under sec. 76(3) of the *Act* or of imposing a protective order at common law must outweigh the potential negative impact on public access to the courts.

> **40** This is precisely the process that was followed in *L. (F.E.) (Re)*, 2008 ABQB 10, 289 D.L.R. (4th) 555. Interestingly, Veit J., dealing with legislation similar to sec. 76(3) of the *Act*, concluded that the legislators did not intend an outright publication ban as found by the motions court judge in this instance. Rather (at para. 6):
>
> > ... [O]n an individual basis, the Court must weigh the constitutional right to free expression, which includes a constitutional right for the public to open courts, against the disclosure of confidential information, especially in a situation where the individual whose information it is wishes to have it disclosed.

23. In *DiMartino v. DiMartino*, 2013 MBQB 206 (CanLII), the Court held that there is a public interest in freedom of the press and in the open court principle; and, there is also a public interest in maintaining the privacy and dignity of the child and his/her family, and in maintaining confidence in child protection agencies by limiting disclosure of their records.

24. The Court further held as follows:

> [23] Confidentiality of child and family services records is specifically protected by statute as noted above, and the Court of Appeal has endorsed the proposition that safeguarding that confidentiality is "a social value of superordinate importance": *Canadian Broadcasting Corp.* supra, at para. 42.
>
> [24] The provisions of *the CFSA* at ss. 75 and 76 enable courts to strike an appropriate balance between upholding confidentiality as a central or governing principle while at the same time permitting an appropriate degree of transparency and public scrutiny of the court process.
>
> [25] S. 76(3) does not create an automatic ban on publication but rather grants to the court a statutory discretion when determining whether, and in what context, to permit the disclosure and/or the production of child and family services agency records.
>
> [26] Therefore, with respect to a family court proceeding which is open to the public and to the media, the benefit of not permitting the disclosure and/or the production of the records of child protection agencies, and of the testimony of witnesses touching upon, or derived from, information contained in those records, must be assessed by the presiding judge to (and, in my view, almost invariably does) outweigh the potential negative impact upon access to the courts by members of the public, and by the media.
>
> [27] I believe the appropriate balance may be achieved by reference to s.75, and by operation of s.76 of *the CFSA*, to allow child protection records to be ordered disclosed and produced in a family court proceeding while still keeping the records and the testimony of witnesses which touches upon or is derived from those records confidential in relation to members of the public, and also without automatically triggering an obligation to notify the media (in cases where the media is not present at the family court proceeding, which is virtually always the situation).
>
> [28] Indeed, as submitted by counsel, the Agencies are not seeking to exclude the media from the proceedings *per* se, to ban publication or to otherwise limit freedom of expression beyond the limits already imposed by statute, pursuant to s. 75 of *the CFSA*, and as such I conclude that no notice, in any event, would need to be

given to the media. [see: *Histed v. Law Society of Manitoba,* 2005 MBCA 106, at para. 47]

[29] More particularly, in relation specifically to the media, the aspired for balance may be achieved if the sealing order pronounced by the judge presiding over such a family court proceeding, while of application to the media, is expressly made subject to the sort of terms contained in s. 75 of *the CFSA*, applicable to a child protection court proceeding.

Injunction on Publication

25. In ***Slater Vecchio LLP v Arvanitis***, 2019 BCSC 1156, the Court granted an interim injunction against the defendant, requiring her to remove certain defamatory statements she had made about her former law firm, and prohibiting her from further defined activity. The defendant has published statements to the internet about the firm, alleging that they stole money from her, amongst other accusations:

[3] By way of background, the defendant was in two motor vehicle accidents, one in 2001 and one in 2004. She retained the firm to act for her. The two parted ways and the defendant retained another firm to represent her. In March 2013, the defendant commenced two actions in Small Claims Court against her former counsel, alleging first that the firm had been negligent, and in the second action alleging that the firm had improperly taken $10,080 from trust. The two actions were transferred to Supreme Court and consolidated for all purposes. The defendant was required to post security for costs in the amount of $8,000.

..

[5] Mr. Justice Sigurdson dismissed the negligence action and referred the issue of the fees to a registrar for determination. He ordered that Slater Vecchio provide written submissions within 21 days if they sought costs of the proceedings, and provided the plaintiff with 21 days for reply.

[6] In subsequent reasons for judgment, reported at 2017 BCSC 155, Mr. Justice Sigurdson dealt with the issue of costs. He found that, notwithstanding Ms. Arvanitis' difficult financial circumstances, the defendants were entitled to their costs, which he fixed at a lump sum of $8,000, the amount that had been posted as security for costs but released to Ms. Arvanitis. That costs judgment remains unpaid.

[7] Ms. Arvanitis did not appeal the judgment or take steps until recently to schedule a registrar's hearing concerning the $10,080 fee issue. When the firm contacted her about the registrar's hearing shortly after the judgment was released, she said she was busy contacting the Law Society, the Ombudsman, and the Human Rights Tribunal, and was not concerned about the fees. Ms. Arvanitis said, "You can let your client, Mr. Vecchio, know that my nuisances claims are far from over."

[8] Ms. Arvanitis proceeded to post comments about the firm on the internet. Her Google reviews of the firm state that the firm removes all negative reviews to hide their "disgusting unethical behaviour" towards their clients, or that the firm steals money from their disabled clients.

[9] On Yelp, another online review forum, Ms. Arvanitis states that the firm "rips off disabled clients in order to make profits with their partners at ICBC," that it is an ICBC-employed law firm that sells out its clients to profit from its partnership with ICBC, that it engaged in unethical practices, that it is totally dishonest, that it steals from disabled injured

clients, and that named individuals at the firm lie and manipulate people into releasing their rights to profit from a partnership with ICBC.

[10] Ms. Arvanitis posted comments on the personal Facebook account of the daughter of one of the partners, stating, "Your father stole $9,000 from me, a disabled woman." She posted similar comments to the son of the same partner, accusing the father of having an unethical legal practice and of stealing $10,080 from her.

[11] Ms. Arvanitis posted a review of the North Vancouver RCMP on Google, accusing them of doing nothing to investigate the theft of $10,080 by the firm. She posted a review of the Law Society of British Columbia, accusing it of inaction despite the theft by her former counsel.

[12] Ms. Arvinitis posted on the Global BC website, offering to share information about the firm, accusing them of unethical practice and overcharging clients. In a subsequent post on that same website she said she would just post everywhere until justice was served in her case.

[13] Ms. Arvanitis has posted comments on the personal Instagram accounts of current or former employees of the plaintiff to the effect that the firm has stolen $10,080 from her. She has been in contact with current or former clients of the firm to assist them with challenging fee accounts, reporting the firm to various authorities, or assisting with commencing legal proceedings against the firm. She maintains she has correspondence from seven or more dissatisfied former clients which she refuses to produce until the trial of this matter.

[14] Ms. Arvanitis also maintains her own website, where she posts information and opinions about the firm, and she has created a YouTube channel apparently directed at the firm.

...

[18] In order to obtain an interlocutory injunction, the plaintiff needs to show there is a serious issue to be tried, irreparable harm if relief is refused, and that the balance of convenience weighs in favour of the plaintiff. The well-known test for injunctions is from *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 and it is restated in a decision of this Court engaging similar considerations to the matter before me: *Acapella Holdings Ltd. v. Drover*, 2016 BCSC 1342.

[19] As the interlocutory relief sought in this case would restrain Ms. Arvanitis' freedom of expression, not only must the plaintiff show there is a serious issue to be tried but also that the words complained of are so manifestly defamatory that any jury verdict to the contrary would be considered perverse: *Canadian National Railway Co. v. Google Inc.*, 2010 ONSC 3121, *Acapella*, and *Nazerali v. Mitchell*, 2011 BCSC 1581.

[20] In *Nazerali*, Mr. Justice Grauer observed that the stringency of the manifestly defamatory test appears to have evolved to deal with situations where something had yet to be published rather than where defamatory articles had already been published, as is the case before me.

[21] The internet is a powerful tool for the spread of defamatory statements. The speed at which information spreads via the internet is now taken for granted but that same speed provides an instant and boundless audience for defamatory posts and commentary.

[22] In *Barrick Gold Corp. v. Lopehandia*, 2004 CanLII 12938 (ON CA), [2004] O.J. No. 2329, the Ontario Court of Appeal examined the interplay between defamation and the

internet, and remarked that the mode and extent of publication is particularly relevant in the internet context:

> ... Communication via the Internet is instantaneous, seamless, inter-active, blunt, borderless and far-reaching. It is also impersonal, and the anonymous nature of such communications may itself create a greater risk that the defamatory remarks are believed.

The court continued on, at paragraphs 33 and 34, to discuss the damage that can be done by internet defamation.

..

[24] The statements in question amount to accusations of criminality and unethical behaviour by a law firm. Those types of comments are, in my view, manifestly defamatory; that is, defamatory on their face. They are posted frequently on many different websites and they appear likely to cause irreparable harm to the plaintiff's reputation by dissuading potential clients, as one example.

..

[26] Returning to the test for an injunction, I am satisfied the plaintiff has demonstrated a serious case to be tried. The comments which Ms. Arvanitis admittedly made are, on their face, defamatory and impact squarely on the reputation of the plaintiff law firm. I am satisfied it is more likely than not that the firm will suffer irreparable harm to its reputation through the online campaign, which misrepresents the findings at trial and accuses the firm of theft, lying, and unethical conduct. The cultivation of relationships with current and former clients to further Ms. Arvanitis' stated ambition of a class action lawsuit is a by-product of her online campaign, which also serves to harm the firm's reputation.

[27] Finally, as to the balance of convenience, I am satisfied there would be greater prejudice to the firm if the injunction were refused pending a final determination of the matter on the merits. Ms. Arvanitis professes to be judgment-proof and represents she has no funds. Any monetary judgment obtained against her would more likely than not be solely symbolic, and this is a relevant consideration: *Newman v. Halstead*, 2006 BCSC 65.

[28] Because Ms. Arvanitis' freedom of expression will be impacted by an injunction, consideration must be given to whether a blanket injunction or a more carefully crafted one should be granted. The difficulty with anything short of a blanket order is that Ms. Arvanitis' comments are peppered liberally throughout a wide variety of commentary on numerous websites. A tailored injunction would no doubt engage the court in closely policing her conduct and would be impracticable. Furthermore, she has repeatedly stated in communications to counsel for the firm and in other venues that she plans to continue her campaign, so her self-policing abilities are questionable.

[29] As a result, I grant an interlocutory injunction in terms sought by Mr. Georgetti in the draft order, which is at Tab A of his written submissions, and that is:

1. Until further order of the Court, Ms. Arvanitis shall immediately delete or remove all statements and content, which she has published or caused to be published in any online forum including any social media platform, which contain direct or indirect reference to:

(a) the plaintiff;

(b) the current or former partners, employees, or family members of the plaintiff; and

(c) current or former clients of the plaintiff or family members thereof.

These are collectively the "Protected Parties".

2. The defendant is hereby prohibited, on an interim basis, from publishing or causing to be published any statements or content in any online forum, including social media, which contain direct or indirect reference to the Protected Parties; directly or indirectly having contact with the Protected Parties except through plaintiff's counsel; directing, encouraging, or assisting any other person from engaging in conduct which the defendant is prohibited from engaging with by way of this order.

26. Such further legal basis as counsel may advise.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #2 of Alison Rose Nagase sworn November 23, 2023.
2. Affidavit #1 of Marianne Stoody sworn November 23, 2023.
3. Affidavit #1 of Alison Rose Nagase sworn November 9, 2021.
4. Such further and other material as counsel may advise.

The applicant estimates that the application will take 20 minutes.

[ ] This matter is within the jurisdiction of a master.

[**x**] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within the time for response to application described below,

(a) file an application response in Form 32,

(b) file the original of every affidavit, and of every other document, that

  (i) you intend to refer to at the hearing of this application, and

  (ii) has not already been filed in the family law case, and

(c) serve on the applicant 2 copies of the following, and on every other party one copy of the following:

  (i) a copy of the filed application response;

  (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

  (iii) if this application is brought under Rule 11-3, any notice that you are required to give under Rule 11-3 (9).

Time for response to application

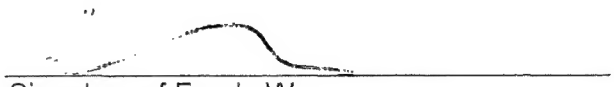
The documents referred to in paragraph (c) above must be served in accordance with that paragraph,

(a) unless one of the following paragraphs applies, within 5 business days after service of this notice of application,

(b) if this application is brought under Rule 11-3, within 8 business days after service of this notice of application, and

(c) if this application is brought to change, suspend or terminate a final order, to set aside or replace the whole or any part of an agreement filed under Rule 2-1 (2) or to change, suspend or terminate an arbitration award filed under Rule 2-1.2(1), within 14 business days after service of this notice of application.

Date: November 24, 2023.



Signature of Fanda Wu
[ ] applicant [**x**] lawyer for applicant

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs _____ of Part 1 of this notice of application

[ ] with the following variations and additional terms:

Date:

Signature of
[ ] Judge [ ] Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

[ ] discovery: comply with demand for documents
[ ] discovery: production of additional documents
[ ] other matters concerning document discovery
[ ] extend oral discovery
[ ] other matter concerning oral discovery
[ ] amend pleadings
[ ] add/change parties
[ ] summary judgment
[ ] summary trial
[ ] service
[ ] interim order
[ ] change order
[ ] adjournments
[ ] proceedings at trial
[ ] appointment of additional expert(s): financial matters
[ ] other matters concerning experts.

The following certificate must be completed by each party to a divorce claim.

PARTY'S CERTIFICATE (*DIVORCE ACT* (CANADA), s. 7.6)

[x] By checking this box, I, Alison Rose Nagase, certify that I am aware of my duties under sections 7.1 to 7.5 of the *Divorce Act* (Canada), which say:

7.1 A person to whom parenting time or decision-making responsibility has been allocated in respect of a child of the marriage or who has contact with that child under a contact order shall exercise that time, responsibility or contact in a manner that is consistent with the best interests of the child.

7.2 A party to a proceeding under this Act shall, to the best of their ability, protect any child of the marriage from conflict arising from the proceeding.

7.3 To the extent that it is appropriate to do so, the parties to a proceeding shall try to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process.

7.4 A party to a proceeding under this Act or a person who is subject to an order made under this Act shall provide complete, accurate and up-to-date information if required to do so under this Act.

7.5 For greater certainty, a person who is subject to an order made under this Act shall comply with the order until it is no longer in effect.

The following certificate must be completed for each party to a divorce claim who is represented by a legal adviser.

LEGAL ADVISER'S CERTIFICATE (*DIVORCE ACT* (CANADA), s. 7.7(3))

[x] By checking this box, I, Fanda Wu, legal adviser for Alison Rose Nagase, certify that I have complied with section 7.7 of the *Divorce Act* (Canada), which says:

7.7 (1) Unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so, it is the duty of every legal adviser who undertakes to act on a spouse's behalf in a divorce proceeding

(a) to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses; and

(b) to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the spouse of the marriage counselling or guidance facilities known to the legal adviser that might be able to assist the spouses to achieve a reconciliation.

(2) It is also the duty of every legal adviser who undertakes to act on a person's behalf in any proceeding under this Act

(a) to encourage the person to attempt to resolve the matters that may be the subject of an order under this Act through a family dispute resolution process, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so;

(b) to inform the person of the family justice services known to the legal adviser that might assist the person

i. in resolving the matters that may be the subject of an order under this Act, and

ii. in complying with any order or decision made under this Act; and

(c) to inform the person of the parties' duties under this Act.